IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1416 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YUNUS JUMABHAI BHIKHLANI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR VM PANCHOLI for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2007

ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives service of rule on behalf of the respondent – State. With the consent of the learned advocates appearing on behalf of the respective parties,

this matter is taken up for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Criminal Procedure Code, the petitioner – original applicant has prayed for an appropriate writ, direction and/or order quashing and setting aside the conditions imposed by the learned Additional Sessions Judge, Fast Track Court No.3, Jamkhambhaliya passed in Criminal Revision Application No.9 of 2007.

3. It is the case on behalf of the petitioner that he has purchased one Indica Car bearing registration No. GJ.10.W.9370 on 11.11.2006 from Khengarsinh Tapubhai Wadher initially by oral agreement and he purchased the same for a sale consideration of Rs.3,57,545/- and he has also paid Rs.50,000/- cash and it was agreed that the petitioner will pay remaining amount by way of installment through the ICICI Bank from whom the finance is taken for purchase of the said Car.

It is the case on behalf of the petitioner that he also paid Rs.10,605/- on 10.12.2006 to the said Shri Khengarsinh Wadher. In the meantime, the aforesaid Car was seized by the police in connection with FIR being Prohibition CR No.376 of 2006 registered with Okha Police Station on 11.12.2006 and therefore, the petitioner filed Mudamal Application No.91 of 2006 under section 451 of the Criminal Procedure Code before the learned JMFC, Dwarka for custody of the said vehicle during the pendency of the trial. The learned JMFC, Dwarka by order dated 5.1.2007 rejected the said application. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Dwarka dated 5.1.2007, the petitioner preferred Criminal Revision Application No.9 of 2007 before the learned Sessions Court, Jamkhambhaliya and learned Additional Sessions Judge, Fast Track Court No.3, Jamkhambhaliya by order dated 7.3.2007 allowed the said revision application directing the Investigating Officer to hand over the custody of the said Indica Car on the condition

that the petitioner is required to furnish bank guarantee of Rs. 3,00,000/- of any Nationalized Bank having its branch in Jamnagar district and cash guarantee along with security of the same amount with condition to produce whenever and wherever required by the learned trial Court and not to transfer the vehicle to any third party. Being aggrieved and dissatisfied with the aforesaid conditions imposed in the aforesaid judgment and order dated 7.3.2007 passed in Criminal Revision Application No.9 of 2007, the petitioner – original applicant has preferred present petition.

4. Shri V.M.Pancholi, learned advocate appearing for the petitioner has vehemently submitted that the learned Sessions Court has committed grave error in imposing such type of harsh conditions and the same is required to be modified. It is further submitted by Shri Pancholi, learned advocate that the petitioner is a poor person and is running a garage and it is not possible for him to furnish bank guarantee and/or cash

guarantee along with security of the same amount as per the direction given by the learned Sessions Court. It is submitted that it is not possible for the petitioner to fulfill the said condition and he is also not in a position to purchase new Indica Car and therefore, he has purchased the aforesaid Car from one Shri Khengarsinh Wadher. It is also further submitted by him that even subsequently during the pendency of the Criminal Revision Application, in fact, written agreement was entered into between the petitioner and the said Shri Khengarsinh Wadher with regard to the sale of the said Indica Car and even though the custody of the vehicle in question is not with the petitioner and the petitioner has to pay the installments to the ICICI Bank and the last installment is paid on 28.7.2007. Shri Pancholi, learned advocate has heavily relied upon the decisions of the Hon'ble Supreme Court in case of ***Ashok Kumar V/s. State of Bihar & Others*** reported in **(2001) 9 SCC 718,** in case of ***Rajendra Prasad V/s. State of Bihar & Another***

reported in **(2001) 10 SCC 88** and in case of ***Sunderbhai Ambalal Desai V/s. State of Gujarat*** reported in **(2002) 10 SCC 290** and relying upon the aforesaid decisions, he has requested to modify the condition imposed by the learned Revisional Court.

5. Shri M.R.Mengde, learned APP has submitted to pass an appropriate order considering the decisions of the Hon'ble Supreme Court referred to hereinabove.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. While allowing the Criminal Revision Application filed by the petitioner and directing to hand over the Mudamal vehicle to the petitioner, the learned Revisional Court has imposed the condition that the petitioner shall furnish bank guarantee of Rs.3,00,000/- of any Nationalized Bank having its branch in Jamnagar district / cash guarantee along with security of the same

amount with a condition to produce the vehicle whenever and wherever it required by the learned trial Court and secondly not to transfer the vehicle to any third party without the order of the learned trial Court and the same shall not be used in any anti-social activities. Now, it is the case on behalf of the petitioner that he has purchased the vehicle in question from the original owner and has to pay the installment of Rs.10,605/- every month to the finance company i.e. ICICI Bank and the installment of Rs.10,605/- p.m. is paid upto July, 2007 and the original owner – Shri Khengarsinh Wadher has not claimed the possession of the vehicle in question. Now, in the backdrop of the above, to impose condition of furnishing bank guarantee of Rs.3,00,000/- / cash guarantee along with the security of the same amount would be too harsh and contrary to the decisions of the Hon'ble Supreme Court rendered in case of ***Ashok Kumar*** (supra), in case of ***Rajendra Prasad*** (supra) and in case of ***Sunderbhai Ambalal Desai*** (supra).

8. Under the circumstances, the impugned order passed by the learned Additional Sessions Judge, Fast Track Court No.3, Jamkhambhaliya passed in Criminal Revision Application No.9 of 2007 dated 7.3.2007 and the condition imposed while handing over the Mudamal vehicle to the petitioner is modified and the custody of the Mudamal vehicle in question is directed to be handed over to the petitioner on the following conditions.

(I) Petitioner shall execute a bond in a sum of Rs.3,00,000/- with two solvent sureties to the satisfaction of the learned JMFC, Dwarka.

(II) Petitioner shall produce the vehicle in question whenever and wherever it is required by the learned trial Court.

(III) Petitioner shall not transfer the vehicle to any third party in any manner whatsoever and shall maintain the vehicle in question roadworthy.

(IV) Petitioner shall see to it that the said Indica Car is not used for any illegal activities.

The order passed by the Revisional Court passed in Criminal Revision Application No.9 of 2007 is modified to the aforesaid extent, however, it is made clear and it is specifically observed that the aforesaid order is passed only in respect of the interim custody under section 451 of the Criminal Procedure Code and by the said order it may not be construed that this Court has expressed any opinion in favour of the petitioner with respect to the title of the said Indica Car and the same is without in any way affecting the rights of the ICICI Bank with regard to non-transfer of the vehicle by Shri Khengarsinh Wadher, who has obtained the loan / finance from the ICICI Bank and who has entered into the agreement with ICICI Bank. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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